

LEGISLATURE OF NEBRASKA

NINETY-NINTH LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 782

Introduced by Mines, 18

Read first time January 4, 2006

Committee: Judiciary

A BILL

1 FOR AN ACT relating to tobacco products; to amend sections
2 28-1418 to 28-1420, 28-1423, 28-1424 to 28-1429, 59-1516,
3 59-1523, 77-2601, and 77-2612, Reissue Revised Statutes
4 of Nebraska, and section 28-1422, Revised Statutes
5 Cumulative Supplement, 2004; to change the legal age
6 to purchase tobacco from eighteen to nineteen; to define
7 terms and update language; to harmonize provisions; to
8 repeal the original sections; and to outright repeal
9 section 28-1421, Reissue Revised Statutes of Nebraska.
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-1418, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 28-1418 ~~Whoever, being a minor under the age of eighteen~~
4 ~~years, shall smoke cigarettes or cigars, or use tobacco in any form~~
5 ~~whatever, in this state, shall be guilty of a Class V misdemeanor.~~
6 ~~Any minor so charged with the violation of this section may be~~
7 ~~free from prosecution when he shall have furnished evidence for~~
8 ~~the conviction of the person or persons selling or giving him the~~
9 ~~cigarettes, cigars or tobacco.~~ A minor under nineteen years of age
10 who smokes cigars or cigarettes or uses tobacco in any other form
11 in this state is guilty of a Class V misdemeanor. A minor charged
12 with violating this section may avoid prosecution if the minor
13 furnishes evidence for the conviction of the person or persons
14 who sold, gave, or otherwise furnished the minor with the cigars,
15 cigarettes, or tobacco in any other form.

16 Sec. 2. Section 28-1419, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 28-1419 ~~Whoever shall sell, give or furnish, in any way,~~
19 ~~any tobacco in any form whatever, or any cigarettes, or cigarette~~
20 ~~paper, to any minor under eighteen years of age, shall be guilty~~
21 ~~of a Class III misdemeanor for each offense.~~ Any person who sells,
22 gives, or otherwise furnishes cigars, cigarettes, tobacco in any
23 other form, or tobacco material, including cigarette paper, to
24 a minor under nineteen years of age is guilty of a Class III
25 misdemeanor for each offense.

1 Sec. 3. Section 28-1420, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 28-1420 It shall be unlawful for any person, partnership,
4 limited liability company, or corporation to sell, keep for sale,
5 or give away in course of trade, any cigars, tobacco, cigarettes,
6 or cigarette material to anyone without first obtaining a license
7 as provided in sections 28-1421 and 28-1422. It shall also be
8 unlawful for any wholesaler to sell or deliver any cigars, tobacco,
9 cigarettes, or cigarette material to any person, partnership,
10 limited liability company, or corporation who, at the time of
11 such sale or delivery, is not the recipient of a valid tobacco
12 license for the current year to retail the same as provided in such
13 sections. It shall also be unlawful for any person, partnership,
14 limited liability company, or corporation to purchase or receive,
15 for purposes of resale, any cigars, tobacco, cigarettes, or
16 cigarette material if such person, partnership, limited liability
17 company, or corporation is not the recipient of a valid tobacco
18 license to retail such tobacco products at the time the same are
19 purchased or received. Whoever shall be found guilty of violating
20 this section shall be guilty of a Class III misdemeanor for each
21 offense. (1) For purposes of sections 28-1420 to 28-1429:

22 (a) Person means any individual, partnership, limited
23 liability company, or corporation;

24 (b) Tobacco product means cigars, cigarettes, tobacco in
25 any other form, or tobacco material, including cigarette paper; and

1 (c) Tobacco sales license means a license issued under
2 section 28-1422.

3 (2) No person shall sell, keep for sale, or give away
4 any tobacco product in the course of retail trade or business
5 unless such person has a tobacco sales license. No wholesale dealer
6 shall sell or deliver any tobacco product to a retailer unless the
7 wholesale dealer has a tobacco sales license. A violation of this
8 section is a Class III misdemeanor for each offense.

9 Sec. 4. Section 28-1422, Revised Statutes Cumulative
10 Supplement 2004, is amended to read:

11 28-1422 Every person, partnership, limited liability
12 company, or corporation desiring a license under sections 28-1420
13 to 28-1429 shall file with the clerk or finance department of
14 the city, town, or village where his, her, their, or its place
15 of business is located, if within the limits of a city, town,
16 or village or with the clerk of the county where such place of
17 business is located if outside the limits of any city, town, or
18 village a written application stating the name of the person,
19 partnership, limited liability company, or corporation for whom
20 such license is desired and the exact location of the place of
21 business and shall deposit with such application the amount of the
22 license fee provided in section 28-1423. If the applicant is an
23 individual, the application shall include the applicant's social
24 security number. A person desiring a tobacco sales license shall
25 file a written application stating the name of the person and

1 business desiring the tobacco sales license and the exact location
2 of the place of business. The application shall be accompanied
3 by the fees required by section 28-1423. If the applicant is an
4 individual, the application shall include the applicant's social
5 security number. The application shall be filed with and the
6 tobacco sales license issued by the clerk or finance department of
7 the city or village where the person's place of business is located
8 or the clerk of the county if the person's place of business is
9 outside the limits of any city or village. The term of a tobacco
10 sales license shall run from the date the application is filed
11 and the fees are paid through December 31 of the calendar year in
12 which the application is made. Tobacco sales licenses shall only be
13 issued to individuals nineteen years of age and older.

14 Sec. 5. Section 28-1423, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 28-1423 The term for which such license shall run shall
17 be from the date of filing such application and paying such
18 license fee to and including December 31 of the calendar year
19 in which application for such license is made, and the license
20 fee for any person, partnership, limited liability company, or
21 corporation selling at retail shall be twenty-five dollars in
22 cities of the metropolitan class, fifteen dollars in cities of
23 the primary and first classes, and ten dollars in cities of all
24 other classes and in towns and villages and in locations outside of
25 the limits of cities, towns and villages. Any person, partnership,

1 limited liability company, or corporation selling annually in the
2 aggregate more than one hundred fifty thousand cigars, packages
3 of cigarettes, and packages of tobacco in any form, at wholesale,
4 shall pay a license fee of one hundred dollars, and if such
5 combined annual sales amount to less than one hundred fifty
6 thousand cigars, packages of cigarettes and packages of tobacco,
7 the annual license fee shall be fifteen dollars. No wholesaler's
8 license shall be issued in any year on a less basis than one
9 hundred dollars per annum unless the applicant for the same shall
10 file with such application a statement duly sworn to by himself
11 or herself, or if applicant is a partnership, by a member of the
12 firm, or if a limited liability company, by a member or manager
13 of the company, or if a corporation, by an officer or manager
14 thereof, that in the past such wholesaler's combined sales of
15 cigars, packages of cigarettes, and packages of tobacco in every
16 form have not exceeded in the aggregate one hundred fifty thousand
17 annually, and that such sales will not exceed such aggregate amount
18 for the current year for which the license is to issue. Any person
19 swearing falsely in such affidavit shall be guilty of perjury and
20 upon conviction thereof shall be punished as provided by section
21 28-915 and such wholesaler's license shall be revoked until the
22 full license fee of one hundred dollars is paid. If application for
23 license is made after July 1 of any calendar year, the fee shall
24 be one-half of the fee provided in this section. (1) The fee for a
25 retail tobacco sales license is:

1 (a) Twenty-five dollars in a city of the metropolitan
2 class;

3 (b) Fifteen dollars in a city of the primary class or a
4 city of the first class; and

5 (c) Ten dollars in a city of the second class, village,
6 or a location outside of the limits of any city or village.

7 (2) The fee for a wholesale tobacco sales license for a
8 wholesale dealer who has combined annual wholesale sales of more
9 than one hundred fifty thousand cigars, packages of cigarettes,
10 and packages of tobacco in any other form is one hundred dollars.
11 The fee for a wholesale tobacco sales license for a wholesale
12 dealer who has combined annual wholesale sales of less than such
13 amount is fifteen dollars. Combined annual wholesale sales of
14 more than one hundred fifty thousand shall be presumed unless the
15 wholesale dealer files a statement, duly sworn by the wholesale
16 dealer or representative thereof, that in the past such wholesale
17 dealer's combined annual wholesale sales have been one hundred
18 fifty thousand or less and that such sales will not exceed that
19 amount for the current year for which the license is to issue.
20 Any person swearing falsely in such statement shall be guilty of
21 perjury under section 28-915 and such wholesale dealer's tobacco
22 sales license shall be revoked until the full license fee of one
23 hundred dollars is paid.

24 (3) If application for a tobacco sales license is made
25 after July 1 of a calendar year, the fee shall be one-half of the

1 fee required in this section.

2 Sec. 6. Section 28-1424, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 28-1424 The license, provided for in sections 28-1421 and
5 28-1422 when issued, shall authorize the sale of cigars, tobacco,
6 cigarettes, and cigarette material by the licensee and employees,
7 to persons over the age of eighteen years, at the place of business
8 described in such license for the term therein authorized, unless
9 the same be forfeited as provided in section 28-1425. A retail
10 tobacco sales license authorizes the licensee and employees to sell
11 tobacco products to individuals nineteen years of age and older at
12 the place of business described in the license for the term of the
13 license, unless the license is revoked under section 28-1425.

14 Sec. 7. Section 28-1425, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 28-1425 Any licensee who shall sell, give or furnish in
17 any way to any person under the age of eighteen years, or who
18 shall willingly allow to be taken from his place of business by
19 any person under the age of eighteen years, any cigars, tobacco,
20 cigarettes or cigarette material, shall be guilty of a Class III
21 misdemeanor. Any officer, director, or manager having charge or
22 control either separately or jointly with others, of the business
23 of any corporation which violates the provisions of sections
24 28-1420 to 28-1429, if he have knowledge of the same, shall be
25 subject to the penalties provided in this section. In addition

1 to the penalties provided in this section, such licensee shall be
2 subject to the additional penalty of a revocation and forfeiture
3 of his, their, or its license, at the discretion of the court
4 before whom the complaint for violation of said sections may be
5 heard. If such license be revoked and forfeited, all rights under
6 such license shall at once cease and terminate. (1) Any person
7 who has a tobacco sales license who sells, gives, or otherwise
8 furnishes tobacco products to a minor under nineteen years of age
9 or willingly allows a minor under nineteen years of age to take
10 tobacco products from the place of business shall be guilty of a
11 Class III misdemeanor and the tobacco sales license is subject to
12 revocation at the discretion of the court before whom the matter is
13 heard. If the tobacco sales license is revoked, all rights under
14 the license terminate.

15 (2) If the tobacco sales licensee is a business entity,
16 any officer, director, or manager of the business with knowledge of
17 a violation of sections 28-1420 to 28-1429 is individually subject
18 to the penalties provided in this section.

19 Sec. 8. Section 28-1426, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 28-1426 All money collected as tobacco sales license fees
22 under the provisions of sections 28-1420 to 28-1429, shall be paid
23 over by the clerk or finance director receiving it remitted to
24 the treasurer of the school fund for the particular city, town,
25 village, or county, as the case may be.

1 Sec. 9. Section 28-1427, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 28-1427 ~~Any person under the age of eighteen years who~~
4 ~~shall obtain cigars, tobacco, cigarettes or cigarette material from~~
5 ~~a licensee hereunder by representing that he is of the age of~~
6 ~~eighteen years or over, shall be guilty of a Class V misdemeanor.~~
7 A minor under nineteen years of age who obtains tobacco products
8 from a tobacco sales licensee by representing that such minor is
9 nineteen years of age or over is guilty of a Class V misdemeanor.

10 Sec. 10. Section 28-1428, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 28-1428 In case of the sale of a business where the
13 owner has a ~~license hereunder~~ tobacco sales license, the licensing
14 authority may authorize such license to be transferred to the
15 purchaser. In case of a change of location by any licensee
16 ~~hereunder~~ tobacco sales licensee, the licensing authority may
17 transfer such license to the new location.

18 Sec. 11. Section 28-1429, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 28-1429 ~~In the event that the license of a licensee~~
21 ~~hereunder shall be revoked and forfeited as provided in~~ If a
22 tobacco sales license is revoked under section 28-1425, no new
23 tobacco sales license shall be issued to such licensee until the
24 expiration of one year from the date of such revocation, ~~and~~
25 ~~forfeiture.~~

1 Sec. 12. Section 59-1516, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 59-1516 (1) In addition to sections 59-1503 and 59-1515,
4 the division may, after notice and hearing, suspend or revoke for
5 any violation of the Unfair Cigarette Sales Act the license or
6 licenses of any person, licensed under ~~the provisions of Chapter 28~~
7 sections 28-1420 to 28-1429 or Chapter 77, article 26 77-2601 to
8 77-2622, and notice of hearing shall be given as provided in the
9 Administrative Procedure Act.

10 (2) Any person whose license or licenses have been so
11 revoked may apply to the division at the expiration of sixty days
12 for a reinstatement of his or her license or licenses. Such license
13 or licenses may be reinstated by the division if it shall appear
14 to the satisfaction of the division that the licensee will comply
15 with the Unfair Cigarette Sales Act and the rules and regulations
16 adopted and promulgated under the act.

17 (3) No person whose license has been suspended or revoked
18 shall sell cigarettes or permit cigarettes to be sold during the
19 period of such suspension or revocation on the premises occupied
20 by him or her or upon other premises controlled by him or her or
21 others or in any other manner or form whatever. No disciplinary
22 proceedings or action shall be barred or abated by the expiration,
23 transfer, surrender, continuance, renewal, or extension of any
24 license issued under ~~the provisions of Chapter 28 or Chapter 77,~~
25 article 26 sections 28-1420 to 28-1429 or 77-2601 to 77-2622.

1 (4) Any person aggrieved by any decision, order, or
2 finding of the division may appeal the decision, order, or finding,
3 and the appeal shall be in accordance with the Administrative
4 Procedure Act.

5 Sec. 13. Section 59-1523, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 59-1523 (1) The cigarette tax division of the Tax
8 Commissioner may, after notice and hearing, revoke or suspend
9 for any violation of section 59-1520 the license or licenses of any
10 person licensed under ~~the provisions of sections 28-1418~~ 28-1420 to
11 28-1429 or sections 77-2601 to 77-2622.

12 (2) Cigarettes that are acquired, held, owned, possessed,
13 transported, sold, or distributed in or imported into this state in
14 violation of section 59-1520 are declared to be contraband goods
15 and are subject to seizure and forfeiture. Any cigarettes so seized
16 and forfeited shall be destroyed. Such cigarettes shall be declared
17 to be contraband goods whether the violation of section 59-1520 is
18 knowing or otherwise.

19 Sec. 14. Section 77-2601, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 77-2601 For purposes of sections 77-2601 to 77-2615:

22 (1) Person means and includes every individual, firm,
23 association, joint-stock company, partnership, limited liability
24 company, syndicate, and corporation;

25 (2) Wholesale dealer means a person who sells cigarettes

1 to licensed retail dealers other than branch stores operated by or
2 connected with such wholesale dealer for purposes of resale and is
3 licensed under ~~section 28-1423~~ sections 28-1420 to 28-1429;

4 (3) Retail dealer includes every person other than a
5 wholesale dealer engaged in the business of selling cigarettes in
6 this state irrespective of quantity, amount, or number of sales
7 thereof;

8 (4) Tax Commissioner means the Tax Commissioner of the
9 State of Nebraska;

10 (5) Cigarette means any roll for smoking made wholly or
11 in part of tobacco irrespective of size or shape and whether or
12 not such tobacco is flavored, adulterated, or mixed with any other
13 ingredient, the wrapper or cover of which is made of paper or any
14 other material excepting tobacco; and

15 (6) Consumer means any person, firm, association,
16 partnership, limited liability company, joint-stock company,
17 syndicate, or corporation not having a license to sell cigarettes.

18 Sec. 15. Section 77-2612, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 77-2612 The Tax Commissioner may employ, with the advice
21 and consent of the Governor, a sufficient number of inspectors,
22 clerks, assistants, and agents to enforce the provisions of
23 sections 77-2601 to 77-2622, including the collection of all
24 stamp taxes and all revenue from cigarette tax meters. In such
25 enforcement, the Tax Commissioner may call to his or her aid the

1 Attorney General, any county attorney, any sheriff, any deputy
2 sheriff, or any other peace officer. The compensation of all
3 persons employed shall be fixed by the Governor and shall be paid
4 from the revenue derived under sections 77-2601 to 77-2622. The
5 expenses of administering sections 77-2601 to 77-2622, including
6 necessary assistants, clerical help, cost of enforcement, cost
7 of stamps, and incidental expenses, when approved by the Tax
8 Commissioner, shall be paid by warrants, issued against the General
9 Fund, but such warrants shall not exceed four percent of the funds
10 collected under sections 77-2601 to 77-2622, such expenses in each
11 instance to be approved by the Tax Commissioner.

12 The Tax Commissioner may adopt and promulgate rules and
13 regulations which are consistent with the provisions of sections
14 77-2601 to 77-2622 and their proper enforcement.

15 Each wholesale dealer shall annually apply to the Tax
16 Commissioner, upon forms to be furnished by the Tax Commissioner
17 for a permit to use the tax meter machines, as set forth in
18 section 77-2603, or to purchase such stamps as provided in section
19 77-2608, or both. The permit shall expire on December 31 each year.
20 Each wholesale dealer shall furnish with such application evidence
21 satisfactory to the Tax Commissioner showing that he or she has
22 obtained a license as a wholesale dealer in accordance with ~~section~~
23 ~~28-1423~~ sections 28-1420 to 28-1429. He or she shall accompany
24 the application with a fee of five hundred dollars to be placed
25 in the General Fund if the permit is granted and otherwise to be

1 returned to the applicant. If the applicant is an individual, the
2 application shall include the applicant's social security number.
3 If the application is approved and the bond referred to in section
4 77-2603 is given and approved, if such bond is required under
5 section 77-2603, the Tax Commissioner shall issue such license
6 which shall be conspicuously posted in the place of business of
7 such wholesale dealer.

8 Sec. 16. Original sections 28-1418 to 28-1420, 28-1423,
9 28-1424 to 28-1429, 59-1516, 59-1523, 77-2601, and 77-2612, Reissue
10 Revised Statutes of Nebraska, and section 28-1422, Revised Statutes
11 Cumulative Supplement, 2004, are repealed.

12 Sec. 17. The following section is outright repealed:
13 Section 28-1421, Reissue Revised Statutes of Nebraska.